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REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

Letter dated 1 September 1995 from the Permanent Representative of Sierra Leone to the United Nations addressed to the Secretary-General

I have the honour to transmit the attached document, entitled "Annotation" (see annex), which is a detailed commentary and clarification of the proposal "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes" (A/48/398, annex, of 15 September 1993) submitted by the delegation of Sierra Leone. It is being transmitted here in response to the request of the Working Group of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at its last session for such a clarification and for the General Assembly, which received the original proposal for consideration during its forty-eighth regular session.

I should be grateful if you could have the text of the present letter and its annex circulated as an official document of the General Assembly under item 148 of the provisional agenda.

(Signed) Alimamy Pallo BANGURA
Ambassador
Permanent Representative

* A/50/150.

ANNEX

Establishment of a Dispute Settlement Service offering or responding with its services early in disputes: proposal submitted by Sierra Leone

Annotation

It is the intent of the present annotation to provide a detailed commentary and clarification of the proposed Dispute Settlement Service offering or responding with its services early in disputes as proposed by Sierra Leone (A/48/398, annex). This effort is in response to the generally welcomed approach encouraged by the Working Group of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization for the sponsor "to highlight those aspects of the proposal which made it different from other existing mechanisms in the field of the peaceful settlement of disputes". a/ To succeed in this task, the sponsor first urges the reader not only to read the proposal carefully, but also to consider the details of the explanatory note (A/48/398, sect. III), all of which cannot be repeated here. The statement made by the sponsor in introducing document A/48/398 to the Special Committee on 23 March 1994 and a schematic diagram of the operational structure of the proposal to enhance clarity, are attached to the present annotation (appendices I and II, respectively).

The Service is based on the peacemaking provisions made by the Charter of the United Nations, primarily in Article 33, paragraph 1. The proposal is actually a challenge to the lack of a permanent subsidiary mechanism to take advantage of the options provided for in Article 33. Diplomatic procedures are indeed available for using the options, but a structured, self-triggering entity is lacking to carry them out. The Service is a structure that gives the disputing parties and the "settlors" a timely opportunity to choose the appropriate options for the particular dispute at hand. Their initial unregulated closed-door discussions will determine whether the future path will involve negotiation, mediation, conciliation, fact-finding, good offices or a combination of one or more of them in any desired sequence for the given situation. The result could even influence a move towards arbitration or judicial settlement. Thus, the question of duplication of procedures, as being a concern to some delegations, becomes irrelevant since the structured process itself uniquely provides a flexible use of any one or more of the peacemaking options encompassed in Article 33.

During the general debate of the Working Group, at least one delegation expressed doubts on the extent to which the Board of Administrators would assist the Secretary-General in this area. Help for the Secretary-General is definitely positive since it gives him an additional flexible alternative for his own use in dealing with disputing parties without hindering the totally independent procedures he is now using or can use (A/48/398, annex, sect. II, para. 20).

The Board of Administrators, one from each of the five regions, represents a body that can have roots in the regions of the United Nations system with

possible developing substructures of its own, appropriate to a specific region, and where early warning possibilities can emerge concerning sensitive dispute situations. Such a relation, coupled with the availability of settlors from the Roster having particular expertise in the basic problems of an area, can contribute to the growing interest and emphasis on regional approaches within the Organization. This relationship can only be advantageous for the Secretary-General and the main organs. The five Administrators are elected by the Sixth Committee and confirmed by the General Assembly and can be re-elected for a second three-year term (sect. II, para. 1). Any concern about the voting procedure should be allayed by anticipating the use of regional caucuses for nominating the candidates prior to the election. The usual practice then would be to adopt the nominations as the election result without a vote. Although not stated in paragraph 3 of section II, the usual United Nations practice, as for an administrative bureau choosing its own chairman on a rotating regional basis, would be implemented. The proposal indicates that "the Board of Administrators shall make an annual report to the General Assembly on activities of the Service" (sect. II, para. 19). The sponsor recommends that this statement should be amended to add:

> "Beyond a minimum recording of the Service's settlement successes or failures, the annual report shall be based only on information from the settlor or settlors as released by the parties to the disputes."

The administrative functions of the Board in New York are referred to in section II, paragraphs 1 to 5, 12, 13 and 18 to 21 and section III, (c) to (f) and (j).

The Secretary-General or his representative is also involved as an ex officio member of the Board of Administrators before or after the Service has been activated and where his advice and opinions can be given (sect. II, para. 2). He and any of the Administrators can be requested to serve as a settlor later in a dispute (sect. II, para. 15, and sect. III, (e)). Actually, the aid of the Service to the Organization as a whole could reduce undue pressure on the Secretary-General. In any case, it should be noted that the structure of the Service was not designed to be controlled by the Secretary-General. His personal relationship to the Service is given in section II, paragraphs 2, 8, 13 and 15, section III, (a) and (e), and note c/.

For the purpose of early warning of new and potential disputes, the Administrators would be encouraged to draw upon the resources of their respective regions and the Secretariat (sect. II, para. 21, and sect. III, (d)). Close relations of the Administrators with their regions would aid this effort. The relations of the Security Council to the Secretary-General, the latter to the Service procedures and the Administrators to the Member States, particularly in New York, would encourage the cause of early warning. Other acceptable sources may be developed. Also, since the proposal makes for a desirable General Assembly influence in the peaceful settlement of disputes, thus contributing to the maintenance of international peace and security (sect. III, (b)), new opportunities for early warning may arise, as depicted in the schematic diagram (appendix II).

The sponsor makes no apology for the schematic nature of the proposal involving its potential activities. It is the schematic procedural options in the hands of its participants that give the Service its overall flexibility. The services can be achieved without disturbing the constitutional balance of the main organs of the Organization and it is recognized that they cannot be invoked to prevent the Security Council from exercising its powers under the Charter (sect. II, paras. 6-8, 12 and 13, and sect. III, (a) and (b)).

As for the relation of the Security Council to the Service, the Council has the option of mandating the use of the Service for its own purpose without being subjected to any limitations (sect. II, para. 8). It also can make its views clear to the Secretary-General, the ex officio member of the Board of Administrators, on matters concerning the Service's offering or responding with its services. The Board of Administrators may activate the Service directly by a simple majority subject to specific limitations unless opposed by the Administrator from the region in which the disputing parties are involved (sect. II, paras. 5-7). Also, no offer of services is made if an effort for settlement by the Security Council or a regional body has been established for the purpose, unless the parties request aid from or transfer responsibility to the Service (sect. II, para. 11). The offering of services by the Service may be prevented by the Security Council under Article 27, paragraph 2, of the Charter, which indicates that the offer can be stopped by a vote of any nine or more members of the Security Council (sect. II, para. 7). A veto is not involved since the matter is a procedural one. The vote by the Security Council should be made within a reasonable period of time, although this has not been indicated. The occurrence of such a disagreement would be most unusual, if not moot, in view of the fluidity of the relation between the Security Council, the Secretary-General and the Board of Administrators under the conditions of paragraph 2 of section II of the proposal, which states:

> "The Secretary-General, or his representative, will place his expertise at the disposal of the Board and, in order to avoid conflict, will keep the Board informed of the existence of such matters as referred to in Article 12, paragraph 2, of the Charter of the United Nations."

As for the requested explanations concerning the financial parameters of the Service, a comparison with funding required for peace-keeping or Chapter VII peace-enforcement obligations should make the budget for the Service appear a minor sum. Firstly, after accepting the services, the parties shall bear all costs of subsequent dispute-settlement sessions (sect. II, para. 17). Secondly, it has been suggested that parties experiencing financial difficulties should have recourse to the Secretary-General's fund for parties seeking similar aid to appear before the International Court of Justice (note c/). Thirdly, the Administrators in New York would not be remunerated, following the precedent of past important assignments and appointments of individual delegates with high leadership and administrative capabilities. Fourthly, the Service does not require the creation of any new organ or Secretariat unit. It intends to use the Office of Legal Affairs as the pool for secretarial services and as the repository of the Roster of Settlors and for the wide dissemination of it (note b/, sect. II, paras. 4, 16 and 22, and sect. III (i)). The Office would service the Sixth Committee elections of the Administrators as is done with the Bureau of the Charter Committee. Also, it could provide for the possible

assignment of the Under Secretary-General/Legal Counsel on occasion as the representative of the Secretary-General on the Board of Administrators, as determined by the Secretary-General.

In the definition of a settlor, as defined in the Service, as given in footnote a/ to the introduction, the term "good officer" is actually not mentioned in the specific dispute settlement options referred to in Article 33, paragraph 1, of the Charter, but it can be included along with the given options in view of the Article's final phrase, "or other peaceful means of their own choice". The good officer is a logical counterpart to the settlor grouping.

The proposal indicates that the settlors should be qualified individuals from as varied a field as possible (sect. II, para. 15, and sect. III, (g)). By the potential choice of three settlors from each of the Member States, these settlors could include the willing service of past heads of State and foreign ministers, former presidents of the General Assembly, former high-ranking judges of national and international tribunals, incumbent and former members of the International Law Commission, and a multitude of other present and former related officials with expertise in activities of a peacemaking nature. These settlors need not only represent recognized legal experts in international military/peace/security issues, but also those having expertise in economic, social and cultural relations where disputes are most often the root cause of all disastrous conflicts. Available settlors from the Roster may be Nobel Laureates involved in these fields. Even the concept of maintaining international peace and security could be expanded to a recognition of its economic and social origins requiring preventive attention through early warning.

The proposal as well as the present annotation have referred to the flexibility with which the Service will function in relation to the United Nations organs and the disputing parties. The Service devolves from the General Assembly and is thus subsidiary to that body, to which it reports annually as described above. However, in effect, after the parties and the settlors are behind closed doors to begin their discussions, they become subsidiary to themselves unless, as an exception, either the Security Council, the General Assembly or the Secretary-General has made specific requests when applying the Service to their own purpose. Otherwise, the parties and settlors convene without any predetermined regulations as to their future course of action. This condition can create an atmosphere similar to the constructive situation that initiated the talks between unlikely contacts in a London hotel and then with others in a Norwegian countryside that led to a major Middle East agreement. The original encounter was made at random. The only difference with such an environment of individuals created by the Service is that the process is initiated by a permanent mechanism of the United Nations system and any successful agreement reached by the parties can be recorded as such by the United Nations. As noted in the introduction, starting the process itself would be considered a major accomplishment.

On 31 January 1992, the Security Council at the level of Heads of State and Government invited the Secretary-General to prepare an analysis and recommendations on strengthening preventive diplomacy, peacemaking and peace-keeping. The concept of the Sierra Leone proposal is directed at the first two categories. The Secretary-General responded with his report "An Agenda for Peace" (A/47/277-S/24111) and under that title the response of Governments

resulted in two General Assembly resolutions, the most recent of which was resolution 47/120 B of 20 September 1993, in which the Assembly decided to consider the use of existing or new machinery, including subsidiary organs under Article 22 of the Charter, to facilitate consideration of any situation coming within the scope of Article 14 of the Charter, with a view to recommending measures for the peaceful adjustment of such a situation. The proposed Dispute Settlement Service reflects and shares the purpose of that decision for consideration. Resolution 47/120 B provides an additional impetus and an optional mechanism to consider the establishment of the Service.

When analysing the pertinent preambular and operative paragraphs of the General Assembly resolutions responding to the Secretary-General's "An Agenda for Peace", it can be deemed that the Sierra Leone proposal is made at the right time to implement the very essence of their provisions directed at preventive diplomacy and peacemaking. Also, it should be noted that in the Secretary-General's Supplement to "An Agenda for Peace" (A/50/60-S/1995/1), under "Instruments for peace and security", preventive diplomacy and peacemaking are considered first among six given instruments.

It is ludicrous that the one Organization charged with the maintenance of international peace and security has no permanent subsidiary unit to cope with the peaceful settlement of disputes. The Dispute Settlement Service can be that body. As already stated, the foundation of the Service is based on the peacemaking provisions of Chapter VI of the Charter and is not to be confused with peace-enforcement operations, which relate to the collective security aspects of Chapter VII (sect. III, (p)). Those who drafted the Charter provided intended subsidiary aid to the Security Council in Chapter VII in the form of the existing but non-used Military Staff Committee and armed forces that were to be contributed by the Member States. However, the Chapter VI provisions do not include specific potential subsidiary bodies for its operations. This situation provides an unusual opportunity and challenge in the pursuit of peace as a similar envisioning of purpose can be applied to Chapter VI. If the Board of Administrators of the Service can be portrayed as kind of a "staff committee" and the Roster of Settlors as its "forces", the intention in establishing the Dispute Settlement Service may be more easily understood, especially considering its relatively minuscule cost as compared with Chapter VII operations. If the Service is established, one certainty can be expressed, that its efforts can contribute to a more rational and humane environment than that which exists today.

As stated, this proposal definitely does not concern peace enforcement, a military option from Chapter VII for halting aggression, which is currently being emphasized as the mechanism for "making the peace" and calling it "peacemaking". Such a connotation upsets traditional nomenclature and reverses the role of a true peacemaker as visualized by the present proposal. Section III, (p), of the explanatory note makes the distinction absolutely clear.

Notes

a/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 33 (A/50/33), para. 63.

APPENDIX I

Statement introducing document A/48/398 on the establishment of a Dispute Settlement Service made on 23 March 1994 by Thomason D. Lawson to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

I appreciate the opportunity given my delegation to introduce the proposal contained in document A/48/398 relating to the establishment of a Dispute Settlement Service that will be available to parties in dispute during the early stages of their dispute.

This effort by my delegation is the outcome of a long and hard look at how best the provisions of the Charter, under Chapter VI, relating to the peaceful settlement of disputes can be used as a framework to enable the United Nations to be more actively involved in conflict avoidance than is now the case.

When the Charter was framed almost 50 years ago, the underlying theme and the major preoccupation was the pursuit of policies that would secure the foundations of a newly won peace and assure States that there would be less likelihood of a re-emergence of those conditions which had led to a global conflagration. Containment became the watchword during those years.

Today, an entirely different world picture confronts us: one in which a growing convergence of interests is becoming manifest, one in which the challenge for the international community has become not the resort to the traditional and costly mechanisms of conflict resolution, which our resources cannot continue to support indefinitely, but one that looks towards utilizing the vast potential of this Organization in a different approach that relies on the productivity of diplomacy in exhausting all possible avenues to settle disputes peacefully.

The proposal proper, comprising 22 paragraphs and to which are appended an introduction and an explanatory note for purposes of elaborating the concept, envisages a mechanism that will be at the disposal of the Organization and which, in addition to responding to requests from parties in dispute for making available its services in resolving their disputes, will enter the present uncharted waters of offering such services to parties in dispute to resolve their dispute either through good offices, conciliation or mediation.

We stand at a point in time when the practicality of the second characteristic of the mechanism, that is, offering unsolicited services for dispute settlement, will increasingly become a *modus operandi* of this Organization's efforts under Chapter VI of the Charter. Paragraph 2 of Article 33 of the Charter anticipates this scenario, whereby parties will be encouraged, without prejudice to state sovereignty, to avail themselves of options for resolving their dispute peacefully.

Further, the Dispute Settlement Service embraces a two-part structure comprising Administrators who will consider requests for the extension of

settlement services and a Roster that will draw upon a pool of potential settlors whose expertise in dispute settlement will afford the parties a wide choice of personalities who will enjoy their trust and confidence, thus facilitating a settlement utilizing the means of their own choice.

The proposal recognizes the increasing role that the Secretary-General is being called upon to play in dispute settlement and the inherent capacity of the General Assembly for the peaceful adjustment of any situation under Article 14 of the Charter.

My delegation has striven to strike a balance between the functions and responsibilities of the Organization's principal organs in a manner that does not compromise their operation, yet offers a means for this Organization to further its purposes.

As I remarked earlier, this approach is a novel one; some may say it is overambitious and raises questions of concern to Member States that will need to be resolved first. To this we say the following: the provisions of the Charter have to be seen in a broad light, providing the foundations on which we, as the succeeding generations, have to build to secure our own future. We cannot as an Organization afford to continue the artificial dichotomy between the form of dispute settlement and the breadth of the function to give effect to that form. Secondly, as delegations are aware, paragraph 2 of part I of General Assembly resolution 47/120 B, on An Agenda for Peace, to which all Member States subscribed, foresees the enhancement of those functions covered by Article 14 of the Charter.

The proposal is not a quantum leap; it does not seek to rewrite the parameters of the relations between States and this Organization. Rather, it is a small step that attempts to make the most of the evolving world situation and the emerging mutuality or interests arising from our common ascription to the basic principles on which this Organization was founded. It will benefit from the detailed consideration of the Committee, which shortage of time may unfortunately not allow. However, it is my delegation's hope that the comments of members of the Committee will be forthcoming, if only in a preliminary fashion. This will form the basis for a more substantive discussion at our next session.

Once again, I thank you for the opportunity to introduce this proposal.

APPENDIX II

ESTABLISHMENT OF A DISPUTE SETTLEMENT SERVICE OFFERING OR RESPONDING WITH ITS SERVICES EARLY IN DISPUTES: PROPOSAL SUBMITTED BY SIERRA LEONE (A/40/398)